

Amend subsections (a)(9) to Section 671.1
Title 14, California Code of Regulations
Re: Review of transgenic fish permit applications

- At its February 7, 2003 meeting, the Commission adopted regulations that defined the term “transgenic” for regulatory purposes, added transgenic aquatic animals to the State’s restricted species list, and specified conditions for security and containment that must be met before issuance of any permits. Included in regulatory language were provisions for an expedited permitting process for those research facilities demonstrating the possession of a federal permit with guidelines that meet or exceed State requirements. The regulations are expected to become effective on May 14, 2003.

Also at the February 7 meeting the Commission heard testimony that recommended a public review process (also called a transparent permit process) for any transgenic permits being considered for approval. The Commission acknowledged these recommendations and requested that the Department draft a regulation change proposal that requires a public review of transgenic permits at Commission meetings.

Some of the interested parties suggested that the Commission instead of the Department issue permits for transgenic fish after a public hearing process. However, based on interpretation of the Fish and Game Code by the Department's legal staff, the Commission lacks authority to issue permits. Instead, the Department must issue or deny a permit. The Commission can hear an appeal of an applicant who has been denied a permit and then make a final decision, or the Commission can consider public testimony that could lead to revocation of a Department-issued permit. The Department's role is to evaluate permit applications based on permitting conditions and risk to the State's natural resources. The Commission's role is to carry out the due process requirements that are constitutionally triggered by permit revocation or denial.

The Department is recommending the addition of a new subsection to section 671.1(a)(9) that allows for public comment, at a regularly scheduled Commission meeting, of permits approved by the Department for importation, export, transport, or possession of transgenic aquatic animals.

Some of the interested parties also recommended that the Department provide a review of the implementation of the transgenic aquatic animal regulations within a year after they become effective. The purpose of such a review is to provide information regarding the effectiveness of the regulations and determine if adjustments are necessary to ensure protection of the State's aquatic resources.

The Department is proposing to add regulations to section 671.1(a)(9) that allows for a report and review of the first year of transgenic related regulations at a regularly scheduled Commission meeting, no later than a year after they became effective.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 1002, 2118, 2120, 2122, 2150, and 2150.2, Fish and Game Code.

Reference: Sections 2116-2118, 2190 and 2271, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None.

(d) Identification of Reports or Documents Supporting Regulation Change: None were identified.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Representatives of various groups interested in regulations dealing with transgenic aquatic animals attended workshops on October 18, 2002 and November 18, 2002 where issues and regulatory language were discussed.

Dates and Locations of Scheduled Hearings:

Date: April 4, 2003

Location: Visalia

Date: May 8, 2003

Location: Riverside

Date: June 20, 2003

Location: Mammoth Lakes

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: None was identified.

(b) No Change Alternative: Current regulations do not provide for a public review of restricted transgenic fish permits, issued by the Department. Interested parties have expressed a desire to have the opportunity to review and comment on such

permits in a public forum. Current regulations do not meet the demands of the majority of the interested public.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on Private Persons: The agency is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

Existing regulations (Section 671.1, Title 14, CCR) provide for the Department to issue permits, with conditions, to import, export, transport, maintain, dispose of, or use for any purpose any animal otherwise restricted by regulation, including transgenic aquatic animals, as defined.

The proposed regulatory action would require the Department to notify any interested party, who has requested that notification, upon receipt of an application for the issuance of such a permit for transgenic aquatic animals.

The proposed regulatory action would also require the Department to consider all written comments received regarding each such permit application prior to approving the permit.

The proposed regulatory action would require the Commission to review all applications approved by the Department at a regularly scheduled meeting and authorize the denial of the permit for specified cause.

The proposed regulatory action would require the Department and interested parties to complete a review of that portion of the regulations (subsection 671.1(a)(9)) specific to the issuance of permits for transgenic aquatic animals not later than May 14, 2004, and provide a summary of that review to the Commission at a regular meeting within 90 days of that date.